

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

MIMEDX GROUP, INC.,

Plaintiff,

v.

TISSUE TRANSPLANT TECHNOLOGY,
LTD. d/b/a BONE BANK ALLOGRAFTS,
and TEXAS HUMAN BIOLOGICS, LTD.,

Defendants.

Civil Action No. 5:14-cv-0719-HLH

JURY TRIAL DEMANDED

**JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT PURSUANT TO
JOINT RULE 26 REPORT AND DISCOVERY PLAN**

Pursuant to the agreement of the Parties as set forth in the Joint Rule 26 Report and Discovery Plan,¹ Plaintiff MiMedx Group, Inc. and Defendants Tissue Transplant Technology, Ltd. d/b/a Bone Bank Allografts, and Human Biologics of Texas, Ltd. d/b/a Texas Human Biologics submit this joint claim construction and prehearing statement. This document is submitted to the Court in a format that conforms to the requirements of the Patent Rules for the United States District Court for the Eastern District of Texas, P.R. 4-3.

I. AGREED TERMS

The parties have not reached an agreement on any terms at this time. If the parties are able to reach an agreement concerning the constructions of any of the claim terms at issue, they will supplement this Statement and/or present such agreement in claim construction briefing.

¹ CM/ECF Dkt. No. 26 and 26-1.

II. PROPOSED CONSTRUCTIONS, INTRINSIC EVIDENCE AND EXTRINSIC EVIDENCE

The parties' respective proposed constructions of disputed claim terms, phrases or clauses with regard to the asserted Claim 9 of U.S. Patent No. 8,709,494 (the "'494 Patent") are reflected in the table attached as Exhibit A, together with all intrinsic evidence from the specification or prosecution history that support the construction and an identification of any extrinsic evidence relied on by the parties. The parties' respective proposed constructions of disputed claim terms, phrases or clauses with regard to the asserted Claims 1, 3, 4, 6 and 7 of U.S. Patent No. 8,597,687 (the "'687 Patent") are reflected in the table attached as Exhibit B, together with all intrinsic evidence from the specification or prosecution history that support the construction and an identification of any extrinsic evidence relied on by the parties.

The parties expressly reserve the right to rely on any intrinsic and extrinsic evidence identified by the other party, and any evidence obtained, or that may be obtained, through claim construction discovery. Each party expressly reserves the right, subject to the other party's objections, if any, to amend, correct, or supplement its claim construction positions and supporting evidence in response to any change of position by the other party, in response to information received through claim construction discovery, including inventor depositions and expert depositions concerning claim construction declarations, or for other good cause.

III. HEARING LENGTH

Plaintiff believes four (4) hours and Defendants believe three (3) hours will be appropriate for the Claim Construction Hearing. The time permitted by the Court should be divided equally between the two sides.

IV. PRESENTATION OF WITNESSES

The parties reserve their right to present expert testimony at the Claim Construction Hearing, subject to the agreed-upon disclosure arrangements between the parties.

V. OTHER ISSUES

The parties do not believe any prehearing conference prior to the Claim Construction Hearing is necessary at this time.

Dated: December 19, 2014

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